

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, Judge

CACR05-448

June 28, 2006

VERA W. WILLHITE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[CR-04-133]

HON. JAMES R. MARSCHEWSKI,
CIRCUIT JUDGE

MOTION TO WITHDRAW
GRANTED; AFFIRMED

This no-merit appeal comes to us from a conviction for second-degree battery following a jury trial in Sebastian County Circuit Court. After examining the adverse rulings addressed by counsel and appellant Vera Willhite's pro se arguments, we hold that an appeal from any of the adverse rulings or the points raised by appellant would be wholly frivolous. Therefore, we affirm the jury's verdict and grant counsel's motion to withdraw.

Aaron Borge testified that appellant, after drinking copious amounts of alcohol, attacked him with a knife during an argument. Borge reported the incident and went to the hospital, where he received treatment for a five-to-six-inch long cut on one arm that was one-inch deep with a superficial wound to his other arm. Steven Asher was present during the altercation and confirmed Borge's account. Sheriff's Deputy Chandler Garrett testified that he investigated the incident; found appellant's home to be in disarray; retrieved a knife from

the kitchen sink of appellant's home that had been washed; and discovered appellant barricaded in a bedroom, naked from the waist down, drinking a can of beer. Garrett stated that appellant was "heavily intoxicated" at the time and had a one-inch laceration on the palm of her hand. Appellant's son, T.J., who was also present during the attack, testified that Borge and his mother got into an argument and that his mother "just reacted" by stabbing Borge in the arm. T.J. admitted that his mother could get "rowdy" and "uncontrollable" when she was intoxicated.

After the jury found appellant guilty, she objected during the sentencing phase to the introduction of several prior convictions on the basis of relevancy and because she did not have counsel at the time of the convictions. The court excluded any drinking-related convictions on the grounds that they were more prejudicial than probative, but it allowed three convictions for disorderly conduct, a conviction for third-degree battery, and a conviction for second-degree terroristic threatening. The jury recommended a sentence of four and a half years in the Arkansas Department of Correction, anger management counseling, and restitution in the amount of \$1,878.20.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the grounds that this appeal is without merit. Counsel's motion was accompanied by a brief purportedly referring to everything in the record that might arguably support an appeal, a record of all motions and requests made by the appellant and denied by

the court, and a statement of the reasons why counsel considers there to be nothing in the record which will support the appeal. The clerk of this court furnished the appellant with a copy of his counsel's brief and notified her of her right to file a pro se brief. Appellant filed pro se points, attacking the credibility of the State's witnesses and arguing that her trial counsel was ineffective. She attached "affidavits" of additional witnesses in her favor that she believes her attorney should have called. The State responded detailing why neither of appellant's points were meritorious.

Appellant's counsel first submits that although appellant made proper motions for directed verdict, those motions were properly denied because there was sufficient evidence to sustain her conviction. On appeal, a motion for directed verdict is treated as a challenge to the sufficiency of the evidence. *Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). We view the evidence in the light most favorable to the State, consider only evidence that supports the verdict, and affirm if substantial evidence supports the conviction. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with a reasonable certainty, compel conclusion one way or the other, without resorting to speculation or conjecture. *Id.* To prove second-degree battery, the State had to show that appellant (1) purposefully caused serious physical injury to another person, (2) purposefully caused physical injury to another person by means of a deadly weapon other than a firearm, or (3) recklessly caused serious physical injury to another person by means of a deadly weapon. Ark. Code Ann. § 5-13-202(a)(1)–(3) (Repl. 2006). In this case, the testimony of

Borge, Asher, Officer Garrett, and even appellant's son all supports a conviction for second-degree battery.

Appellant's counsel also notes that appellant objected to her prior convictions being introduced during the sentencing phase. In reviewing a trial court's decision to admit evidence of prior convictions, we recognize that the trial court has wide discretion in allowing such evidence to be presented, and we will not reverse such a decision absent an abuse of discretion. *Jiles v. State*, 78 Ark. App. 43, 82 S.W.3d 173 (2002). Evidence relevant to sentencing may include, but is not limited to, prior convictions. Ark. Code Ann. § 16-97-103(2) (Repl. 2006). Our supreme court has held that un-counseled misdemeanor convictions can be introduced as "evidence relevant to sentencing," simply allowing the jury or the court to consider all relevant evidence when making a sentencing decision. In the present case, the trial court showed restraint by allowing some convictions but not all, specifically limiting the convictions that could be introduced. Therefore, we agree with counsel that the trial judge did not abuse his discretion in admitting the convictions.

In her pro se points, appellant maintains her counsel was ineffective because he should have called other witnesses in her defense; however, her argument is barred because she did not raise it below. *Nichols v. State*, 69 Ark. App. 212, 11 S.W.3d 19 (2000). Appellant also challenges the credibility of the State's witnesses. Issues of credibility are for the jury to determine and are not appropriate for our review on appeal. *Arnett v. State*, 342 Ark. 66, 27 S.W.3d 721 (2000).

Affirmed.

Motion to Withdraw as Counsel granted.

CRABTREE and BAKER, JJ., agree.